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10 CITY OF OAKLAND

ORIGINAL  
FILED

JAN 13 2004

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

E-filing

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

10 ALEJANDRA CRUZ,  
11 OSCAR TINOCO, A Minor,  
12 By And Through His Guardian Ad Litem,  
13 ISABEL CRUZ,  
14 ALEJANDRO CRUZ,  
15 ISRAEL ORTIZ,  
16 CARLOS GALLARDO,

17 Plaintiffs,

18 vs.

19 The CITY OF OAKLAND,  
20 V. RIVERA, Individually And In His Capacity  
21 As A Police Officer For The City of Oakland,  
22 B. KLINE, Individually And In His Capacity,  
23 As A Police Officer For The City of Oakland,  
24 M. MUÑOZ, Individually And In His Capacity  
25 As A Police Officer For The City of Oakland,  
26 INTERVENTION AGENCY, INC.,  
LEONARD MONTALVO,  
DAVID POLARIS,  
SULTAN,  
JAMES WEISS,  
EVA GARCIA,  
DOES 1 To 600,

Defendants.

Case No. C 04 0179  
DEFENDANT CITY OF OAKLAND'S  
PETITION FOR REMOVAL TO  
FEDERAL COURT

CW

ADR

1 Petitioner City of Oakland states as follows:

2 1. Defendant desires to exercise its rights under the provisions of Title  
3 28 U.S.C. §1441, et seq. to remove this action from the Superior Court of the State of  
4 California, County of Alameda, Unlimited Jurisdiction, where this action is now pending as  
5 Alejandra Cruz, et al. v. The City of Oakland, et al., Superior Court No. RG03097560.

6 2. This is an action of a civil nature in which the District Courts of the  
7 United States have been given original jurisdiction in that it arises, in part, under the laws  
8 of the United States, as provided in 28 U.S.C. §1331 and, further, in that it arises out of  
9 Acts of Congress commonly known as 42 U.S.C. §1983, and the Fourth Amendment to  
10 the United States Constitution.

11 3. The date on or before which this defendant is required by the  
12 California Code of Civil Procedure and the Rules of Alameda County Superior Court to  
13 answer or otherwise plead to Plaintiffs' complaint has not lapsed. A filed copy of Plaintiffs'  
14 Amended Complaint was received by Defendant City of Oakland. The complaint was  
15 served on December 15, 2003. This Petition for Removal is filed in accordance with the  
16 requirements of 28 U.S.C. §1446.

17 4. Pursuant to the provisions of 28 U.S.C. §1446, Defendant attaches  
18 herewith and incorporates herein by reference, copies of the following documents  
19 (attached as Exhibit A ) served upon it in this action:

20 (a) First Amended Summons; and  
21 (b) Amended Complaint for Damages for: Assault; Battery; False  
22 Arrest; False Imprisonment; Violation of Civil Rights; Intentional Infliction of Emotional  
23 Distress; Negligent Infliction of Emotional Distress; Negligence; Negligent Hiring, Training;  
24 Supervision & Discipline; Punitive Damages.

25 5. Attached as Exhibit B is a copy of the Defendants City of Oakland,  
26 Officers V. Rivera, B. Kline and M. Munoz' Answer to Complaint filed with the Superior

1 Court on January 12, 2003.

2           6.     As declared above, Defendant City of Oakland desires and is entitled  
3 to have this action removed from the Superior Court of the State of California for the  
4 County of Alameda, Unlimited Jurisdiction, to the United States District Court for the  
5 Northern District of California as such district is the district where the suit is pending and  
6 conditioned that Defendant will pay all costs and disbursements incurred by reason of  
7 these removal proceedings should it be determined that this action was not removable or  
8 was improperly removed.

9                   7.       Written notice of the filing of this Petition will be given to all parties to  
10 this action as required by law.

11                   8.     A true copy of this petition will be filed with Alameda County Superior  
12 Court as provided by law.

13                   9.     Defendant City of Oakland respectfully requests that this action be  
14 removed to this court and that this court accept jurisdiction of this action. The  
15 aforementioned defendant further requests that this action be placed on the docket of this  
16 court for further proceedings as if this action had been originally filed in this court.

17 DATED: January 13, 2004

JOHN A. RUSSO, City Attorney  
RANDOLPH W. HALL, Chief Assistant City Attorney  
WILLIAM E. SIMMONS, Supervising Trial Attorney  
ARLENE M. ROSEN, Senior Deputy City Attorney

By:

Atorneys for Defendant  
CITY OF OAKLAND

## **EXHIBIT A**

## SUMMONS (CITACION JUDICIAL)

### ON FIRST AMENDED COMPLAINT

#### NOTICE TO DEFENDANT: (Aviso a Acusado)

The CITY OF OAKLAND, V. RIVERA, Individually And In His Capacity As A Police Officer For The City of Oakland, B. KLINE, Individually And In His Capacity, As A Police Officer For The City of Oakland, M. MUÑOZ, Individually And In His Capacity As A Police Officer For The City of Oakland, INTERVENTION AGENCY, INC., LEONARD MONTALVO, DAVID POLARIS, SULTAN, JAMES WEISS, EVA GARCIA, DOES 1 To 600.

FOR COURT USE ONLY

#### YOU ARE BEING SUED BY PLAINTIFF:

(A Ud. le está demandando)

ALEJANDRA CRUZ; OSCAR TINOCO, A Minor, By And Through His Guardian Ad Litem, ISABEL CRUZ; ALEJANDRO CRUZ; ISRAEL ORTIZ; CARLOS GALLARDO

You have 30 CALENDAR DAYS after this summons is served on you to file a typewritten response at this court.

A letter or phone call will not protect you; your typewritten response must be in proper legal form if you want the court to hear your case.

If you do not file your response on time, you may lose the case, and your wages, money and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book).

Después de que le entreguen esta citación judicial usted tiene un plazo de 30 DIAS CALENDARIOS para presentar una respuesta escrita a máquina en esta corte.

Una carta o una llamada telefónica no le ofrecerá protección; su respuesta escrita a máquina tiene que cumplir con las formalidades legales apropiadas si usted quiere que la corte escuche su caso.

Si usted no presenta su respuesta a tiempo, puede perder el caso, y le pueden quitar su salario, su dinero y otras cosas de su propiedad sin aviso adicional por parte de la corte.

Existen otros requisitos legales. Puede que usted quiera llamar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de referencia de abogados o a una oficina de ayuda legal (vea el directorio telefónico).

The name and address of the court is: (El nombre y dirección de la corte es)  
Superior Court of California, County of Alameda,  
1225 Fallon Street  
Oakland, CA 94612

CASE NUMBER: (Número del Caso)

RG03 097560

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es)  
STEVEN R. JACOBSEN ESQ. (Bar # 95246)  
LAW OFFICES OF STEVEN R. JACOBSEN  
1212 Broadway, Suite 900, Oakland, California 94612-1805

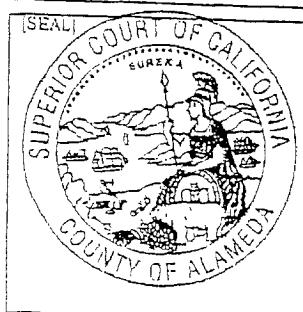
Phone No. (510) 465-1500  
Fax No. (510) 465-1837

DATE:  
(Fecha)

DEC 03 2003

ARTHUR SIMS  
EXECUTIVE OFFICER/CLERK Clerk, by  
(Actuario)

*Shirley E. Smith*, Deputy  
(Delegado)



#### NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify):  
under:  
 CCP 416.10 (corporation)  
 CCP 416.20 (defunct corporation)  
 CCP 416.40 (association or partnership)  
 other:  
4.  by personal delivery on (date):

<input type="checkbox"/>	CCP 416.60 (minor)
<input type="checkbox"/>	CCP 416.70 (conservatee)
<input type="checkbox"/>	CCP 416.90 (individual)

(See reverse for Proof of Service)

#### SUMMONS

ENDORSED  
FILED  
ALAMEDA COUNTY

NOV 13 2003

CLERK OF THE SUPERIOR COURT  
By Cheryl Watkins, Deputy

1 STEVEN R. JACOBSEN  
2 BAR No. 95246  
3 JAMES L. ARMSTRONG  
4 BAR No. 87797  
5 LAW OFFICES OF STEVEN R. JACOBSEN  
1212 BROADWAY, SUITE 900  
OAKLAND, CALIFORNIA 94612-1805  
(510) 465-1500

6 ATTORNEYS FOR PLAINTIFFS  
7

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9  
10 IN AND FOR THE COUNTY OF SANTA CLARA

11 ALEJANDRA CRUZ,  
12 OSCAR TINOCO, A Minor,  
By And Through His Guardian Ad Litem,  
13 ISABEL CRUZ,  
ALEJANDRO CRUZ,  
ISRAEL ORTIZ,  
CARLOS GALLARDO,  
14 Plaintiffs,  
vs.

15 The CITY OF OAKLAND,  
16 V. RIVERA, Individually And In His Capacity  
As A Police Officer For The City of Oakland,  
17 B. KLINE, Individually And In His Capacity,  
As A Police Officer For The City of Oakland,  
18 M. MUÑOZ, Individually And In His Capacity  
As A Police Officer For The City of Oakland,  
19 INTEVENTION AGENCY, INC.,  
LEONARD MONTALVO,  
20 DAVID POLARIS,  
SULTAN,  
21 JAMES WEISS,  
EVA GARCIA,  
22 DOES 1 To 600,  
Defendants.

No. RG03-097560

AMENDED COMPLAINT FOR  
DAMAGES FOR:

1. ASSAULT;
2. BATTERY;
3. FALSE ARREST;
4. FALSE IMPRISONMENT;
5. VIOLATION OF CIVIL RIGHTS;
6. INTENTIONAL INFILCTION OF  
EMOTIONAL DISTRESS;
7. NEGLIGENT INFILCTION OF  
EMOTIONAL DISTRESS;
8. NEGLIGENCE;
9. NEGLIGENT HIRING, TRAINING,  
SUPERVISION & DISCIPLINE;
10. PUNITIVE DAMAGES.

24 Come now plaintiffs and allege as follows:

25 PARTIES

26 1. Plaintiffs were, at all times herein mentioned, residents of the apartment  
complex commonly known as Amber Tree Gardens, located at 2555 Foothill Blvd., in  
27 the City of Oakland, California, and the incidents and occurrences herein alleged  
28

1 occurred at the Amber Tree Gardens in the City of Oakland, California. At no time  
2 mentioned herein did any plaintiff assault, batter or threaten any defendant herein,  
3 commit any crime against any defendant herein, or take any action that provoked or  
4 justified the actions of defendants complained of herein.

5 2. Defendant City of Oakland is a municipal corporation, duly organized and  
6 existing under the laws of the State of California. Defendant City of Oakland its  
7 supervisory employees and agents, Does 301 to 400, inclusive, shall hereinafter be  
8 referred to collectively as "City".

9 3. At all times herein mentioned, defendants V. Rivera ("Rivera"), B. Kline  
10 ("Kline"), M. Munoz ("Munoz") and Does 1 to 100 were employed by the defendant City  
11 as police officers. Said defendants are sued herein individually and in their capacity as  
12 police officers for the City, and are hereinafter collectively referred to as "defendant  
13 police officers". In engaging in the conduct described herein, defendant police officers  
14 acted under color of law and in the course and scope of their employment by the City,  
15 and acted in concert with the other defendants. In engaging in the conduct described  
16 herein defendant police officers exceeded the authority vested in them as police officers  
17 under the United States Constitution and California Constitution, and as employees of  
18 defendant City.

19 4. Defendant Intervention Agency is a corporation, duly organized and  
20 existing under the laws of the State of California, and doing business in the City of  
21 Oakland, California. Defendant Agency and its supervisory employees and agents,  
22 Does 401 to 500, inclusive, shall hereinafter be collectively referred to as "Agency".

23 5. At all times herein mentioned, defendants Leonard Montalvo ("Montalvo"),  
24 David Polaris ("Polaris"), Sultan ("Sultan") and Does 101 to 200 were employed by the  
25 defendant Agency as security guards. Said defendants are sued herein individually and  
26 in their capacity as employees of the Agency, and are hereinafter collectively referred to  
27 as "defendant security guards". In engaging in the conduct described herein, defendant  
28 security guards acted under color of law and in the course and scope of their

1 employment by the Agency, and acted in concert with the other defendants. In  
2 engaging in the conduct described herein defendant security guards exceeded the  
3 authority vested in them as security guards under the United States Constitution and  
4 California Constitution, and as employees of defendant Agency.

5 6. At all times herein mentioned, James Weiss, Eva Garcia and Does 201 to  
6 300 were the owners and managers of the apartment complex known as Amber Tree  
7 Gardens, located at 2555 Foothill Blvd., Oakland, California. Said defendants are  
8 hereinafter collectively referred to as "defendant Landlords". In engaging in the conduct  
9 described herein, defendant Landlords acted under color of law and in concert with the  
10 other defendants. Defendant Landlords were the principals and employers of  
11 defendants Agency and security guards.

12 7. In engaging in the conduct described herein, defendants Agency and  
13 security guards acted under color of law and in the course and scope of their  
14 employment by defendant Landlords. In engaging in the conduct described herein  
15 defendants Agency and security guards exceeded the authority vested in them as  
16 security guards under the United States Constitution and California Constitution, and as  
17 employees of defendant Landlords.

18 7. Plaintiffs are ignorant of the true names and capacities of defendants  
19 Does 1 to 600, and therefore sue those defendants by such fictitious names. Plaintiffs  
20 are informed and believe, and thereon allege that each defendant so named is  
21 responsible in some manner for the injuries and damages suffered by plaintiffs as set  
22 forth herein. Plaintiffs will amend this complaint to state the true names and capacities  
23 of defendants Does 1 to 600, inclusive, when they have been ascertained.

24 8. Plaintiffs are required to comply with an administrative claim requirement.  
25 Plaintiffs have complied with all applicable requirements.

#### STATEMENT OF FACTS

27 9. On July 13, 2002, plaintiffs were lawfully on the premises of the Amber  
28 Tree Gardens when defendant security guards arrived on the premises. Defendant

1 security guards ordered plaintiffs Israel Ortiz and Carlos Gallardo to leave the public  
2 sidewalk in front of the Amber Tree Gardens and the common areas within Amber Tree  
3 Gardens, and to enter each his own apartment. The security guards had no authority in  
4 law to do so, and had no reason to suspect plaintiffs of having committed any crime.  
5 Without any just provocation or cause, defendant security guards began to assault and  
6 batter plaintiffs Ortiz and Gallardo.

7 10. Defendant security guards assaulted and battered plaintiffs Ortiz and  
8 Gallardo, repeatedly hitting them and kicking them after they had fallen to the ground,  
9 striking plaintiffs' heads, bodies, arms, hands, and legs in the course of their attack.  
10 Defendant security guards continued to assault and batter plaintiffs Ortiz and Gallardo  
11 after they were lying on the ground and handcuffed. One of the security guards  
12 sprayed pepper spray in plaintiff Ortiz' face.

13 11. Upon seeing the attack upon plaintiffs Ortiz and Gallardo, plaintiff  
14 Alejandro Cruz asked defendant security guards why they were attacking plaintiffs.  
15 Defendant security guards thereupon threatened with firearms, assaulted and battered  
16 plaintiff Alejandro Cruz.

17 12. Defendant police officers arrived at the Amber Tree Gardens. At that  
18 point, without probable cause or any justification in law, defendant security guards  
19 caused plaintiffs Ortiz, Gallardo and Alejandro Cruz to be falsely arrested and  
20 imprisoned by defendant police officers. In so doing, defendant security guards knew,  
21 or in the exercise of reasonable diligence should have known, that there was no cause  
22 or justification in law to arrest and imprison said plaintiffs. Notwithstanding said  
23 knowledge, defendant security guards caused the arrest and imprisonment of said  
24 plaintiffs.

25 13. At the time that they arrested plaintiffs Ortiz, Gallardo and Alejandro Cruz,  
26 defendant police officers knew, or in the exercise of reasonable diligence should have  
27 known, that said plaintiffs had committed no crime, and that there was no cause or  
28 justification in law to arrest and imprison said plaintiffs. Notwithstanding said

1 knowledge, defendant police officers arrested and imprisoned said plaintiffs. Plaintiff  
2 Alejandro Cruz was taken, handcuffed in a City of Oakland police car to a remote  
3 location where he was held, then returned to his residence without charges. Plaintiffs  
4 Ortiz and Gallardo were taken to the City of Oakland jail where they were held without  
5 bail or assistance of counsel for two days, then released. During the two days, they  
6 were unable to attend to their usual occupations, and lost their jobs as a result. No  
7 charges were filed against plaintiffs Ortiz, Gallardo or Alejandro Cruz.

8 14. During the course of the attack, assault, battery, arrest and imprisonment  
9 of plaintiffs Ortiz, Gallardo and Alejandro Cruz, defendant security guards and  
10 defendant police officers, acting under color of law, used excessive force and violence  
11 upon the persons of plaintiffs Ortiz, Gallardo and Alejandro Cruz.

12 15. Several hours later, in the early morning of July 14, 2002, defendant  
13 security guards returned to the Amber Tree Gardens, along with defendant police  
14 officers. At that time, another occupant of the apartment occupied by plaintiffs Ortiz  
15 and Gallardo took photographs of defendant security guards. Thereupon, in the  
16 presence of, and with the approval, protection, authority and participation of defendant  
17 police officers, defendant security guards broke, entered and trespassed into the  
18 apartment, against the will of the occupants thereof, and attacked, threatened,  
19 assaulted and battered plaintiff Oscar Tinoco, a minor child. During the attack, assault  
20 and battery, defendant security guards and defendant police officers, acting under color  
21 of law, used excessive force and violence upon the person of plaintiff Tinoco.

22 16. At that point, without probable cause or any justification in law, defendant  
23 security guards caused plaintiff Tinoco to be falsely arrested and imprisoned by  
24 defendant police officers. In so doing, defendant security guards knew, or in the  
25 exercise of reasonable diligence should have known, that there was no cause or  
26 justification in law to arrest and imprison said plaintiff. Notwithstanding said knowledge,  
27 defendant security guards caused the arrest and imprisonment of said plaintiff.

28 17. At the time that they arrested plaintiff Tinoco, defendant police officers

1 knew, or in the exercise of reasonable diligence should have known, that said plaintiff  
2 had committed no crime, and that there was no cause or justification in law to arrest  
3 and imprison said plaintiff. Notwithstanding said knowledge, defendant police officers  
4 arrested and imprisoned said plaintiff. Plaintiff Tinoco was cited and released. No  
5 charges were filed against plaintiff Tinoco.

6 18. Plaintiff Alejandra Cruz, the mother of plaintiff Tinoco, was present at the  
7 scene, and witnessed the attack, assault and battery upon, and the arrest of, her son,  
8 plaintiff Tinoco.

9 19. The above-described attacks, threats, assaults and batterings, and the  
10 false arrests and imprisonment of plaintiffs by defendant security guards and police  
11 officers were brutal, malicious, and without any just provocation or cause, proximately  
12 causing injuries and damages to plaintiffs.

13 20. Defendant City has and had a mandatory duty of care to properly and  
14 adequately hire, train, retain, supervise and discipline its police officer employees so as  
15 to avoid unreasonable risk of harm to citizens. With deliberate indifference, the City  
16 failed to take necessary, proper, or adequate measures in order to prevent the violation  
17 of plaintiffs' rights and injuries and damages to plaintiffs. The City breached its duty of  
18 care to citizens in that it failed to adequately train, supervise and discipline its police  
19 officers, including defendant police officers, in the proper use of force and arrest  
20 authority, and/or failed to have adequate policies and procedures regarding the proper  
21 use of force and arrest authority. This lack of adequate supervisorial training  
22 demonstrates the existence of an informal custom or policy of promoting, tolerating,  
23 and/or ratifying the continuing use of excessive force toward the public by police officers  
24 employed by defendant City.

25 21. Based on information and belief, plaintiffs allege that prior to the dates of  
26 the subject incidents involving plaintiffs, defendant police officers had a history of  
27 engaging in acts of excessive force, alone and in concert with defendant security  
28 guards, for which defendant City failed to properly and adequately train, supervise, and

1 discipline said defendant police officers.

2 22. Defendant Agency has and had a mandatory duty of care to properly and  
3 adequately hire, train, retain, supervise and discipline its security guard employees so  
4 as to avoid unreasonable risk of harm to plaintiffs and to other members of the public.  
5 With deliberate indifference, defendant Agency failed to take necessary, proper, or  
6 adequate measures in order to prevent the violation of plaintiffs' rights and injuries and  
7 damages to plaintiffs. Defendant Agency breached its duty of care to plaintiffs in that it  
8 failed to adequately train, supervise and discipline security guards, including defendant  
9 security guards, in the proper use of force and arrest authority, and/or failed to have  
10 adequate policies and procedures regarding the proper use of force and arrest  
11 authority. This lack of adequate supervisorial training demonstrates the existence of an  
12 informal custom or policy of promoting, tolerating, and/or ratifying the continuing use of  
13 excessive force toward plaintiffs and other members of the public by security guards  
14 employed by defendant Agency.

15 23. Based on information and belief, plaintiffs allege that prior to the date of  
16 the subject incidents involving plaintiffs, defendant security guards had a history of  
17 engaging in acts of excessive force, brutality and deprivation of rights, alone and in  
18 concert with defendant police officers, for which defendant Agency failed to properly  
19 and adequately train, supervise, and discipline said defendant security guards.

20 24. Defendant Landlords had a mandatory duty of care to properly and  
21 adequately hire, train, retain, supervise and discipline their security guard employees so  
22 as to avoid unreasonable risk of harm to plaintiffs and to other members of the public.  
23 With deliberate indifference, defendant Landlords failed to take necessary, proper, or  
24 adequate measures in order to prevent the violation of plaintiffs' rights and injuries and  
25 damages to plaintiffs. The Landlords breached their duty of care to plaintiffs in that  
26 they failed to adequately train, supervise and discipline their security guards, including  
27 defendant security guards, in the proper use of force and arrest authority, and/or failed  
28 to have adequate policies and procedures regarding the proper use of force and arrest

1 authority. This lack of adequate supervisorial training demonstrates the existence of an  
2 informal custom or policy of promoting, tolerating, and/or ratifying the continuing use of  
3 excessive force toward plaintiffs and other members of the public by security guards  
4 employed by defendant Landlords.

5 25. Based on information and belief, plaintiffs allege that prior to the dates of  
6 the subject incidents involving plaintiffs, defendant security guards had a history of  
7 engaging in acts of excessive force, brutality and deprivation of rights, alone and in  
8 concert with defendant police officers, for which defendant Landlords failed to properly  
9 and adequately train, supervise, and discipline said defendant security guards.

10 **DAMAGES**

11 26. Plaintiffs have been physically, mentally, and emotionally injured and  
12 damaged as a proximate result of the acts and omissions of defendants, as set forth  
13 above, including but not limited to: physical injury, severe emotional distress, loss of  
14 jobs and income, loss of freedom, and loss of constitutional and civil rights.

15 27. Plaintiffs are entitled to recover economic damages according to proof,  
16 including but not limited to medical expenses and loss of income.

17 28. Plaintiffs are further entitled to recover non-economic damages, including  
18 but not limited to, pain, suffering, loss of constitutional and civil rights, loss of freedom,  
19 and emotional distress.

20 29. As a proximate result of defendants' conduct, plaintiffs suffered pain and  
21 physical injuries. As a further proximate result of defendants' conduct, plaintiffs  
22 suffered severe and extreme emotional distress, fear, terror, anxiety, humiliation and  
23 loss of their sense of security, dignity and pride.

24 30. The conduct of defendant security guards, police officers, Agency and  
25 Landlords was malicious, wanton and oppressive. Plaintiffs are therefore entitled to an  
26 award of punitive damages as against said defendants.

27 31. Plaintiffs found it necessary to engage the services of private counsel to  
28 vindicate their rights under the law. Plaintiffs are therefore entitled to an award of all

1 attorney's fees incurred in relation to this action for violation of their civil rights.  
2

3 FIRST CAUSE OF ACTION

4 (42 U.S.C. Section 1983)

5 (All plaintiffs against all defendants herein)

6 32. Plaintiffs hereby reallege and incorporate by reference herein paragraphs  
7 1 through 31 of this Complaint.

8 33. In doing the acts complained of herein, defendants acted under color of  
9 law to deprive plaintiffs of certain constitutionally protected rights including, but not  
limited to:

10 a. The right to be free from unreasonable searches and seizures, as  
11 guaranteed by the Fourth Amendment to the United States Constitution;

12 b. The right not to be deprived of life or liberty without due process of law, as  
13 guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution;

14 c. The right to be free from the use of excessive force by police officers,  
15 which is guaranteed by the Fourth, Fifth, and Fourteenth Amendments to the United  
16 States Constitution;

17 d. The right to equal protection of the laws, as guaranteed by the Fourteenth  
18 Amendment to the United States Constitution; and,

19 e. The right to be free from interferences with the zone of privacy, as  
20 protected by the Fourth and Ninth Amendments to the United States Constitution.

21 Wherefore, plaintiffs pray for relief as hereinafter set forth.

22 SECOND CAUSE OF ACTION

23 (42 U.S.C. Section 1983)

24 (All plaintiffs against defendant City)

25 34. Plaintiffs hereby reallege and incorporate by reference herein paragraphs  
26 1 through 33 of this Complaint.

27 35. Defendant City, by and through its supervisory employees and agents,  
28 has and had a mandatory duty of care to properly and adequately hire, train, retain,

1 supervise and discipline its police officer employees so as to avoid unreasonable risk of  
2 harm to plaintiffs and other members of the public. With deliberate indifference,  
3 defendant City failed to take necessary, proper, or adequate measures in order to  
4 prevent the violation of plaintiffs' rights, and injuries and damages to plaintiffs.  
5 Defendant City breached its duty of care to plaintiffs in that it failed to adequately train,  
6 supervise and discipline its police officers, including defendant police officers, in the  
7 proper use of force and arrest authority, and/or failed to have adequate policies and  
8 procedures regarding the proper use of force. This lack of adequate supervisorial  
9 training demonstrates the existence of an informal custom or policy of City of  
10 promoting, tolerating, and/or ratifying the continuing use of excessive force toward  
11 plaintiffs and other members of the public by police officers employed by defendant  
12 City.

13 36. Based on information and belief, plaintiffs allege that prior to the dates of  
14 the subject incidents involving plaintiffs, defendant police officers had a history of  
15 engaging in acts of excessive force, of which defendant City or should have known for  
16 quite some time prior to the subject incidents involving plaintiffs. Based on information  
17 and belief, plaintiffs further allege that despite its knowledge of defendant police  
18 officers' repeated and egregious misconduct, defendant City failed to properly and  
19 adequately train, supervise, and discipline said defendant police officers for said  
20 repeated and egregious misconduct.

21 37. The acts of defendant police officers alleged herein are the direct and  
22 proximate result of the deliberate indifference of defendant City to the violation of the  
23 constitutional rights of members of the public by defendant police officers herein, and  
24 other members of the police department of the City. Plaintiffs' injuries were a  
25 foreseeable and proximate result of the deliberate indifference of defendant City to the  
26 pattern, practices, customs and policies described above.

27 Wherefore, plaintiffs pray for relief as hereinafter set forth.

28 ///

THIRD CAUSE OF ACTION

(42 U.S.C. Section 1983)

(All plaintiffs against defendants Agency and Landlords)

38. Plaintiffs hereby reallege and incorporate by reference herein paragraphs 1 through 37 of this Complaint.

6       39. Defendants Agency and Landlords have and had a mandatory duty of  
7 care to properly and adequately hire, train, retain, supervise and discipline their security  
8 guard employees so as to avoid unreasonable risk of harm to plaintiffs and other  
9 members of the public. With deliberate indifference, defendants Agency and Landlords  
10 failed to take necessary, proper, or adequate measures in order to prevent the violation  
11 of plaintiffs' rights, and injuries and damages to plaintiffs. Defendants Agency and  
12 Landlords breached their duty of care to plaintiffs in that they failed to adequately train,  
13 supervise and discipline their security guards, including defendant security guards, in  
14 the proper use of force and arrest authority, and/or failed to have adequate policies and  
15 procedures regarding the proper use of force. This lack of adequate supervisorial  
16 training demonstrates the existence of an informal custom or policy of Agency and  
17 Landlords of promoting, tolerating, and/or ratifying the continuing use of excessive force  
18 toward plaintiffs and other members of the public by security guards employed by  
19 defendants Agency and Landlords.

20       40. Based on information and belief, plaintiffs allege that prior to the dates of  
21 the subject incidents involving plaintiffs, defendant security guards had a history of  
22 engaging in acts of excessive force, of which defendants Agency and Landlords knew  
23 or should have known for quite some time prior to the subject incidents involving  
24 plaintiffs. Based on information and belief, plaintiffs further allege that despite their  
25 knowledge of defendant security guards' repeated and egregious misconduct,  
26 defendants Agency and Landlords failed to properly and adequately train, supervise,  
27 and discipline said defendant security guards for said repeated and egregious  
28 misconduct.

1       41. The acts of defendant security guards alleged herein are the direct and  
2 proximate result of the deliberate indifference of defendants Agency and Landlords to  
3 the violation of the constitutional rights of members of the public by defendant security  
4 guards herein, and other employees of Agency and Landlords. Plaintiffs' injuries were  
5 a foreseeable and proximate result of the deliberate indifference of defendants Agency  
6 and Landlords to the pattern, practices, customs and policies described above

Wherefore, plaintiffs pray for relief as hereinafter set forth.

FOURTH CAUSE OF ACTION

**(Assault and Battery-Intentional)**

(Against all defendants herein)

11 42. Plaintiffs reallege and incorporate by reference herein paragraphs 1  
12 through 41 of this Complaint.

13       43. Defendant police officers and security guards, acting under color of law  
14 and under the direction of defendants City, Agency and Landlords, intentionally and  
15 wrongfully assaulted and battered plaintiffs Ortiz, Gallardo, Alejandro Cruz and Tinoco,  
16 proximately causing injuries and damages to said plaintiffs, and causing severe  
17 emotional distress to plaintiff Alejandra Cruz. Said defendant police officers and  
18 security guards intended to assault and batter said plaintiffs, which assault and battery  
19 proximately caused plaintiffs' damages as herein set forth.

20       44. As an actual and proximate result of said defendants' intentional and  
21 wrongful conduct against plaintiffs, plaintiffs have sustained economic loss and non-  
22 economic damages in amounts to be determined according to proof at trial.

Wherefore, plaintiffs pray for relief as hereinafter set forth

FIFTH CAUSE OF ACTION

**(Assault and Battery-Negligent)**

(Against all defendants herein)

27       45. Plaintiffs reallege and incorporate by reference herein paragraphs 1  
28 through 44 of this Complaint, except for any and all allegations of intentional, malicious

1 extreme, outrageous, wanton, and oppressive conduct by defendants, and any and all  
2 allegations requesting punitive damages.

3 46. The negligent act and omissions to act of all defendants, as set forth  
4 hereinabove in the Statement of Facts portion of this Complaint, proximately caused the  
5 injuries and damages to plaintiffs on July 13 and 14, 2002.

6 47. As an actual and proximate result of said defendants' negligence,  
7 plaintiffs have sustained economic and non-economic damages in amounts to be  
8 determined according proof at trial.

9 Wherefore, plaintiffs pray for relief as hereinafter set forth.

10 SIXTH CAUSE OF ACTION

11 (Violation of Civil Code Section 52.1)

12 (Plaintiffs against all defendants herein)

13 48. Plaintiffs reallege and incorporate by reference herein paragraphs 1  
14 through 47 of this Complaint.

15 49. The conduct of defendant police officers and security guards, as  
16 described herein, acting in the course and scope of their employment by defendants  
17 City, Agency and Landlords, violated California Civil Code Section 52.1, in that they  
18 interfered with plaintiffs' exercise and enjoyment of their civil rights, as enumerated  
19 hereinabove, through the wrongful assault, battery, arrest and imprisonment of  
20 plaintiffs.

21 50. As a direct and proximate result of defendants' violation of Civil Code  
22 Section 52.1, plaintiffs suffered violation of their constitutional rights, and suffered  
23 damages as set forth herein.

24 51. Since said conduct of said defendants occurred in the course and scope  
25 of their employment, defendants City, Agency and Landlords are therefore liable to  
26 plaintiff pursuant to respondeat superior.

27 52. Plaintiffs are entitled to injunctive relief and an award of their reasonable  
28 attorney's fees pursuant to Civil Code Section 52.1(b).

1 Wherefore, plaintiffs pray for relief as hereinafter set forth.  
2

3 SEVENTH CAUSE OF ACTION

4 (Intentional Infliction of Emotional Distress)

5 (Plaintiffs against all defendants herein)

6 53. Plaintiffs reallege and incorporate by reference herein paragraphs 1  
7 through 52 of this Complaint.

8 54. The conduct of defendant police officers and security guards, as set forth  
9 hereinabove in the Statement of Facts portion of this Complaint, was extreme and  
10 outrageous and beyond the scope of conduct which should be tolerated by the public in  
11 a democratic and civilized society. Said defendants committed the aforementioned  
12 extreme and outrageous acts with the intent to inflict severe mental and emotional  
distress upon plaintiffs.

13 55. As a proximate result of defendants' willful, intentional and malicious  
14 conduct, plaintiffs suffered severe and extreme mental and emotional distress.  
15 Therefore, plaintiffs are entitled to an award of punitive damages as against  
16 defendants.

17 Wherefore, plaintiffs pray for relief as hereinafter set forth.

18 EIGHTH CAUSE OF ACTION

19 (Negligent Infliction of Emotional Distress)

20 (Plaintiffs all defendants herein except defendant City)

21 56. Plaintiffs reallege and incorporate by reference herein paragraphs 1  
22 through 55 of this Complaint, except for any and all allegations of intentional, malicious,  
23 extreme, outrageous, wanton, and oppressive conduct by defendants, and any and all  
24 allegations requesting punitive damages.

25 57. The wrongful conduct of defendants, as set forth hereinabove in the  
26 Statement of Facts portion of this Complaint, constitutes negligent conduct done with  
27 conscious disregard for the rights of plaintiffs.

28 58. As a proximate result of defendants' negligent conduct, plaintiffs suffered

1 severe emotional and mental distress, having a traumatic effect on plaintiffs' emotional  
2 tranquility.

3 Wherefore, plaintiffs pray for relief as hereinafter set forth.  
4

5 NINTH CAUSE OF ACTION

6 (Negligence)

7 (Plaintiffs against all defendants herein except defendant City)

8 59. Plaintiffs reallege and incorporate by reference herein paragraphs 1  
9 through 58 of this Complaint, except for any and all allegations of intentional, malicious,  
10 extreme, outrageous, wanton, and oppressive conduct by defendants, and any and all  
allegations requesting punitive damages.

11 60. At all times herein mentioned, defendants had a duty of care to avoid  
12 causing unnecessary physical harm and distress to others, pursuant to Civil Code  
13 Section 1714(a). The wrongful conduct of said defendants, as set forth herein, did not  
14 comply with the standard of care to be exercised by reasonable persons, proximately  
15 causing plaintiffs to suffer injuries and damages as set forth herein.

16 61. The wrongful conduct of said defendants that caused the damages to  
17 plaintiffs, as set forth herein, constitutes negligent conduct done with conscious  
18 disregard for the rights of plaintiffs.

19 62. As a proximate result of said defendants' negligent conduct, plaintiffs  
20 suffered physical injury, and severe emotional and mental distress and injury having a  
21 traumatic effect on their emotional tranquility, and damages. Said defendants are  
22 therefore liable to plaintiffs.

23 Wherefore, plaintiffs pray for relief as hereinafter set forth.  
24

25 TENTH CAUSE OF ACTION

26 (Negligent Hiring, Retention, Training, Supervision, and Discipline)

27 (Plaintiffs against defendants City, Agency and Landlords)

28 63. Plaintiffs hereby reallege and incorporate by reference herein paragraphs  
1 through 62 of this Complaint, except for any and all allegations of intentional,

1 malicious, extreme, outrageous, wanton, and oppressive conduct by defendants, and  
2 any and all allegations requesting punitive damages.

3 64. Defendants City, Agency and Landlords, by and through their supervisory,  
4 employees and agents, have and had a mandatory duty of care to property and  
5 adequately hire, train, retain, supervise, and discipline their police officer and security  
6 guard employees so as to avoid unreasonable risk of harm to plaintiffs and other  
7 members of the public. With deliberate indifference, City, Agency and Landlords failed  
8 to take necessary, proper, or adequate measures in order to prevent the violation of  
9 plaintiffs' rights, and injuries and damages to plaintiffs. Defendants City, Agency and  
10 Landlords breached their duty of care to plaintiffs in that they failed to adequately hire,  
11 retain, supervise, discipline, and train police officers and security guards, including the  
12 defendant police officers and security guards, in the proper use of force and arrest  
13 authority, and/or failed to have adequate policies and procedures regarding the proper  
14 use of force and arrest authority. This lack of adequate supervisorial training  
15 demonstrates the existence of an informal custom or policy of promoting, tolerating  
16 and/or ratifying the continuing use of excessive force and improper arrest toward the  
17 public by police officers and security guards employed by defendants City, Agency and  
18 Landlords.

19 65. Based on information and belief, plaintiffs allege that prior to the dates of  
20 the subject incidents involving plaintiffs, defendant police officers and security guards  
21 had a history of engaging in acts of excessive force, of which defendants City, Agency  
22 and Landlords knew or should have known for quite some time prior to the subject  
23 incidents involving plaintiffs. Based on information and belief, plaintiffs further allege  
24 that despite their knowledge of defendant police officers' and security guards' repeated  
25 and egregious misconduct, defendants City, Agency and Landlords failed to properly  
26 and adequately train, supervise, and discipline said defendant police officers and  
27 security guards for said repeated and egregious misconduct.

28 66. As a proximate result of the aforesaid conduct of defendants City, Agency

1 and Landlords, plaintiffs suffered severe emotional and mental distress and injury  
2 having a traumatic effect on plaintiffs' emotional tranquility, and damages.  
3

JURY DEMAND

4 67. Plaintiffs hereby demand a jury trial in this action.  
5

PRAYER

6 Wherefore, plaintiffs pray for relief, as follows:  
7

- 1 1. For general damages in an amount to be determined at trial;
- 2 2. For special damages according to proof;
- 3 3. For punitive damages against all defendants except defendant City,  
4 according to proof;
- 5 4. For injunctive relief enjoining defendants City, Agency and Landlords from  
6 authorizing, allowing, or ratifying the practice by any employee of defendants City,  
7 Agency and Landlords from using unreasonable and excessive force against any  
8 member of the public, pursuant to California Civil Code Section 52.1;
- 9 5. For violation of California Civil Code 52 and 52.1, statutory damages, and  
10 reasonable attorney's fees;
- 11 6. For reasonable attorney's fees pursuant 42 U.S.C. Section 1988.
- 12 7. For costs of suit herein incurred; and,
- 13 8. For such other and further relief as the Court deems just and proper.

14 Dated: May 20, 2003.

15 LAW OFFICES OF STEVEN R. JACOBSEN  
16

17 By Steven R. Jacobson  
18 STEVEN R. JACOBSEN  
19 Attorney for Plaintiffs  
20

21

22

23

24

25

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28

**EXHIBIT B**

1 JOHN A. RUSSO, City Attorney - State Bar #129729  
2 RANDOLPH W. HALL, Chief Assistant City Attorney - State  
3 WILLIAM E. SIMMONS, Supervising Trial Attorney - State  
4 ARLENE M. ROSEN, Senior Deputy City Attorney - State Bar  
5 One Frank H. Ogawa Plaza, 6th Floor  
6 Oakland, California 94612  
7 Telephone: (510) 637-0360  
8 22827/317578

9 Attorneys for Defendant  
10 CITY OF OAKLAND, et al.

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF ALAMEDA

13 (UNLIMITED JURISDICTION)

14 **FILED BY FAX**  
15 **ALAMEDA COUNTY**

16 **January 12, 2004**

17 **CLERK OF  
18 THE SUPERIOR COURT  
19 By Rosanne Case, Dep**

20 **CASE NUMBER:**

21 **RG03097560**

22 ALEJANDRA CRUZ,  
23 OSCAR TINOCO, A Minor,  
24 By And Through His Guardian Ad Litem,  
25 ISABEL CRUZ,  
26 ALEJANDRO CRUZ,  
27 ISRAEL ORTIZ,  
28 CARLOS GALLARDO,

29 Case No. RG03097560

30 DEFENDANTS CITY OF OAKLAND,  
31 OFFICERS V. RIVERA, B. KLINE AND  
32 M. MUÑOZ' ANSWER TO COMPLAINT

33 Plaintiffs,

34 vs.

35 The CITY OF OAKLAND,  
36 V. RIVERA, Individually And In His Capacity  
37 As A Police Officer For The City of Oakland,  
38 B. KLINE, Individually And In His Capacity,  
39 As A Police Officer For The City of Oakland,  
40 M. MUÑOZ, Individually And In His Capacity  
41 As A Police Officer For The City of Oakland,  
42 INTEVENTION AGENCY, INC.,  
43 LEONARD MONTALVO,  
44 DAVID POLARIS,  
45 SULTAN,  
46 JAMES WEISS,  
47 EVA GARCIA,  
48 DOES 1 To 600,

49 Defendants.

1 Defendants CITY OF OAKLAND, OFFICERS V. RIVERA, B. KLINE and  
2 M. MUÑOZ' ANSWER TO COMPLAINT hereby answer, object, and otherwise respond to  
3 the Complaint on file herein as follows.

4 Defendants generally deny each and every allegation contained in said  
5 complaint.

6 I.

7 **AS A FIRST, SEPARATE AND AFFIRMATIVE DEFENSE**, defendants  
8 allege that the complaint fails to state a claim upon which relief can be granted.

9  
10 II.

11 **AS A FURTHER, SECOND, SEPARATE AND AFFIRMATIVE DEFENSE**,  
12 defendants allege that the injuries and damages plaintiffs complain of resulted from the  
13 acts and/or omissions of others, and without any fault on the part of these answering  
14 defendants, or any of them.

15 III.

16 **AS A FURTHER, THIRD, SEPARATE AND AFFIRMATIVE DEFENSE**,  
17 defendants allege that any party or individual who contributed to and/or caused the  
18 alleged damages was not acting as its agent or with its knowledge or within the course  
19 and/or scope of employment with Defendant CITY OF OAKLAND.

20 IV.

21 **AS A FURTHER, FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE**,  
22 defendants allege that plaintiffs' claims are barred by all applicable Government Code  
23 protections and immunities, including, but not limited to, Sections 815 through 900,  
24 inclusive. Said sections are pleaded as though fully set forth herein.

25 ///

26 ///

V

**AS A FURTHER, FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE**

3 defendants allege that all of the actions of defendants, and each of them, were  
4 undertaken in good faith and with the objectively reasonable belief that such actions were  
5 valid, necessary, reasonable, lawful and constitutionally proper, entitling these answering  
6 defendants to the qualified immunity of good faith.

VI.

**AS A FURTHER, SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE**

9 defendants allege that, if they, or any of them, in any fashion caused the injuries or  
10 damages alleged, although such liability is expressly denied herein, their acts and/or  
11 omissions were reasonable and privileged.

vii

**AS A FURTHER, SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE**

14 defendants allege, on information and belief, that plaintiffs failed to mitigate damages.

VIII.

AS A FURTHER, EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE

17 defendants allege that, to the extent that plaintiffs allege or assert matters not contained in  
18 a legally sufficient claim filed by them, this action is barred by the claims requirements set  
19 forth in Government Code Section 905, et seq.

IX

**AS A FURTHER, NINTH, SEPARATE AND AFFIRMATIVE DEFENSE**

22 defendants allege that this action is barred under Government Code § 945.6 by plaintiffs'  
23 failure to file this action within six months after denial of their claim by defendants.

X.

AS A FURTHER, TENTH, SEPARATE AND AFFIRMATIVE DEFENSE

26 | defendants allege that this action is barred by all applicable statutes of limitations

1 including, but not limited to, California Code of Civil Procedure Sections 338, 340 and  
2 342.

3 XI.

4 **AS A FURTHER, ELEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE,**  
5 defendants allege that this action is barred by the doctrine of unclean hands.

6 XII.

7 **AS A FURTHER, TWELFTH, SEPARATE AND AFFIRMATIVE DEFENSE,**  
8 defendants allege that this action is barred by the *doctrine of laches*.

9 XIII.

10 **AS A FURTHER, THIRTEENTH, SEPARATE AND AFFIRMATIVE**  
11 **DEFENSE**, defendants allege plaintiffs assumed the risk inherent in their own conduct, in  
12 full knowledge of the likelihood of injury and/or damages.

13 XIV.

14 **AS A FURTHER, FOURTEENTH, SEPARATE AND AFFIRMATIVE**  
15 **DEFENSE**, defendants allege that, pursuant to the provisions of California Government  
16 Code §820.4, the City is immune from liability as the City's actions are an attempt to  
17 validly enforce a law of the City of Oakland under the City's police powers.

18 XV.

19 **AS A FURTHER, FIFTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE,**  
20 defendants allege that, pursuant to California Government Code §820.2, the City is  
21 immune from liability as the City's actions are an act of official discretion of the City.

22 XVI.

23 **AS A FURTHER, SIXTEENTH, SEPARATE AND AFFIRMATIVE**  
24 **DEFENSE**, defendants allege that, if they, or any of them, performed any of the acts  
25 and/or omissions complained of herein, then defendants were advancing a legitimate  
26 public interest.

XVII.

**AS A FURTHER, SEVENTEENTH, SEPARATE AND AFFIRMATIVE  
DEFENSE**, defendants allege that, at all times herein mentioned, the acts complained of, if any there were, were privileged under applicable statutes and case law.

XVIII.

**AS A FURTHER, EIGHTEENTH, SEPARATE AND AFFIRMATIVE  
DEFENSE**, defendants allege that, the complaint fails to state facts sufficient to constitute  
a cause of action or for entitlement to recovery of attorneys' fees under either California  
C.C.P. Section 1095 or Government Code Section 800.

## PRAYER

**WHEREFORE**, defendants pray that:

1. Plaintiffs take nothing by their Complaint;
2. Defendants have judgment against Plaintiffs;
3. Defendants be awarded its costs of suit; and
4. For such other and further relief as the Court may deem proper.

DATED: January 9, 2004

JOHN A. RUSSO, City Attorney  
RANDOLPH W. HALL, Chief Assistant City Attorney  
WILLIAM E. SIMMONS, Supervising Trial Attorney  
ARLENE M. ROSEN, Senior Deputy City Attorney

By: Miller M. Fisher  
Attorneys for Defendants  
City of Oakland, et al.

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is One Frank H. Ogawa Plaza, 6th Floor, Oakland, California 94612. On January 12, 2004, I served the within document:

DEFENDANTS CITY OF OAKLAND, OFFICERS V. RIVERA,  
B. KLINE AND M. MUÑOZ' ANSWER TO COMPLAINT

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below, or as stated on the attached service list, on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Oakland, California addressed as set forth.
- by causing personal delivery by \_\_\_\_\_ of the document(s) listed above to the person(s) at the address(es) set forth below.
- by personally delivering the document(s) listed above to the person(s) set forth below.

STEVEN R. JACOBSEN, ESQ.  
JAMES L. ARMSTRONG, ESQ.  
LAW OFFICES OF STEVEN R. JACOBSEN  
1212 Broadway, Suite 900  
Oakland, California 94612-1805

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 12, 2004, at Oakland, California.

Barbara J. Woods  
BARBARA J. WOODS